C. & P. 213; Reid *v.* Hodgson, 1 Cranch C. C. 491, Fed. Cas. No. 11, 667; Reyburn *v.* Belotti, 10 Mo. 597; Titford *v.* Knott, 2 Johns. Cas. (N. Y.) 211. A member of a family is qualified by reason of his knowledge of family correspondence in which he had no part. Tuttle *v.* Rainey, 98 N. C. 513, 45 S. E. 475."

Inns and Innkeepers—Distinction between "Innkeeper" and "Boarding House Keeper."—Plaintiff engaged a room at the Standish Hotel at Portland, Or., on January 16, 1915, and occupied the same until April 4, 1915, and afterward, on April 18, 1915, he again engaged another room and occupied it until March 18, 1917, paying a fixed monthly rental. During this later period his room was forced open, and three suits of clothes and other property were stolen. He brought an action to recover for the loss of his clothing. His right to recover turned upon whether he occupied the relation of a "guest" or "lodger."

The Supreme Court of Oregon (McIntosh *v.* Schops, 180 Pacific Reporter, 593), in reversing a judgment for plaintiff and directing a nonsuit, points out the distinction between an "innkeeper" and "boarding house keeper" in an interesting opinion by Judge Bennett. The opinion states:

"The distinction at common law between an innkeeper and a boarding or lodging house keeper was that the innkeeper catered to the traveling public—the transient traveler, who, in passing through the country, stopped from day to day in the pursuit of his travels. The lodging house or boarding house keeper, on the other hand, took care of more permanent customers, who remained for longer periods, and more or less permanently, in the same place.

"The innkeeper has always been held to a very high degree of responsibility, and if the property of his guest was stolen while under his roof, even without his fault, he was generally liable therefor. But it seems well established that before he incurred this strict liability it must appear, not only that he was an innkeeper or hotel keeper, but also that the party he was entertaining should sustain the relationship of 'guest.' The same innkeeper, who sustained that relationship to such as were 'guests,' might be only a lodging or boarding house keeper as to other persons who were staying with him permanently, and were not therefore 'guests,' within the technical meaning of the word."

Because the plaintiff's occupancy of the room was of a permanent nature, at a fixed rental, he was held to be a lodger and his right to recover denied.

Taxation—Salary of Federal Judges.—In Evans *v.* Gore, 40 Sup. Ct. Rep. 550 the Supreme Court (Mr. Justice Holmes dissenting)

held that Act Feb. 24, 1919, § 213 (Comp. St. Ann. Supp. 1919, § 6336½ff), so far as it imposes a tax on the income of judges of the courts of the United States, including their salaries, violates Const. art. 3, § 1 of the federal Constitution and that the 16th Amendment authorizing Congress to collect taxes on incomes, from whatever source derived, without apportionment, among the states, does not authorize a tax on the salary of a federal judge, contrary to article 3, § 1.

The court said in part: "The prohibition is general, contains no excepting words, and appears to be directed against all diminution, whether for one purpose or another; and the reasons for its adoption, as publicly assigned at the time and commonly accepted ever since, make with impelling force for the conclusion that the fathers of the Constitution intended to prohibit diminution by taxation as well as otherwise—that they regarded the independence of the judges as of far greater importance than any revenue that could come from taxing their salaries. True, the taxing power is comprehensive and acknowledges few exceptions. But that there are exceptions, besides the one we here recognize and sustain, is well settled. In Collector *v.* Day, 11 Wall. 113, 20 L. Ed. 122, it was held that Congress could not impose an income tax in respect of the salary of a judge of a state court; in Pollock *v.* Farmers' Loan & Trust Co., 157 U. S. 429, 585, 601, 652, 653, 15 Sup. Ct. 673, 39 L. Ed. 759, it was held—the full court agreeing on this point—that Congress was without power to impose such a tax in respect of interest received from bonds issued by a state or any of its counties or municipalities; and in United States *v.* Railroad Co., 17 Wall. 322, 21 L. Ed. 597, there was a like holding as to municipal revenues derived by the city of Baltimore from its ownership of stock in a railroad company. None of those decisions was put on any express prohibition in the Constitution, for there is none; but all recognize and gave effect to a prohibition implied from the independence of the states within their own spheres.

"When we consider, as was done in those cases, what is comprehended in the congressional power to tax—where its exertion is not directly or impliedly interdicted—it becomes additionally manifest that the prohibition now under discussion was intended to embrace and prevent diminution through the exertion of that power; for, as this court repeatedly has held, the power to tax carriers with it "the power to embarrass and destroy"; may be applied to every object within its range 'in such measure as Congress may determine'; enables that body 'to select one calling and omit another, to tax one class of property and to forbear to tax another'; and may be applied in different ways to different objects so long as there is 'geographical uniformity' in the duties, imports and exercises imposed. McCulloch *v.* Maryland, 4 Wheat. 316, 431, 4 L. Ed. 579; Pacific Insurance Co.

v. Soule, 7 Wall. 433, 443, 19 L. Ed. 95; Austin *v.* The Aldermen, 7 Wall. 694, 699, 19 L. Ed. 224; Veazie Bank *v.* Fenno, 8 Wall. 533, 541, 548, 19 L. Ed. 482; Knowlton *v.* Moore, 178 U. S. 41, 92, 106, 20 Sup. Ct. 747, 44 L. Ed. 969; Treat *v.* White, 181 U. S. 264, 268, 269, 21 Sup. Ct. 611, 45 L. Ed. 853; McCray *v.* United States, 195 U. S. 27, 61, 24 Sup. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561; Flint *v.* Stone Tracy Co., 220 U. S. 107, 158, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312; Billings *v.* United States, 232 U. S. 261, 282, 34 Sup. Ct. 421, 58 L. Ed. 596; Brushaber *v.* Union Pacific R. R. Co., 240 U. S. 1, 24-26, 36 Sup. Ct. 236, 60 L. Ed. 493, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414. Is it not therefore morally certain that the discerning statesmen who framed the Constitution and were so sedulously bent on securing the independence of the judiciary intended to protect the compensation of the judges from assault and diminution in the name or form of a tax? Could not the purpose of the prohibition be wholly thwarted if this avenue of attack were left open? Certainly there is nothing in the words of the prohibition indicating that it is directed against one legislative power and not another; and in our opinion due regard for its spirit and principle requires that it be taken as as directed against them all.

"This view finds support in rulings in Pennsylvania, Louisana, and North Carolina, made under like constitutional restrictions, Commonwealth ex rel. *v.* Mann. 5 Watts & S. (Pa.) 403, 415, et seq.; New Orleans *v.* Lea, 14 La. Ann. 197; 48 N. C. Appendix; N. C. Public Documents 1899, Doc. No. 8, p. 95; In re Taxation of Salaries of Judges, 131 N. C. 692, 42 S. E. 970; Purnell *v.* Page, 133 N. C. 125, 45 S. E. 534; and has strong sanction in the actual practice of the goverment, to which we now advert.

"No attempt was made to tax the compensation of federal judges prior to 1862. A statute of that year, chapter 119, § 86, 12 Stat. 472, with its amendments, subjected the salaries of all civil officers of the United States to an income tax of 3 per cent. and was construed by the revenue officers as including the compensation of the President and the judges. Chief Justice Taney, the head of the judiciary, wrote to the Secretary of the Treasury a letter of protest (157 U. S. 701), based on the prohibition we are considering, and in the course of the letter said: * * *

"'Upon these grounds I regard an act of Congress retaining in the Treasury a portion of the compensation of the judges, as unconstitutional and void.'

"The collection of the tax proceeded, and, at the suggestion of the Chief Justice, this court ordered his protest spread on its records. In 1869 the Secretary of the Treasury referred the question to the Attorney General (Judge Hoar), and that officer rendered an opinion in substantial accord with Chief Justice Taney's protest, and also advised that the tax on the President's compensation was

likewise invalid. 13 Op. A. G. 161. The tax on the compensation of the President and the judges was then discontinued, and the amounts theretofore collected were all refunded—a part through administrative channels and a part through the action of the Court of Claims and ensuing appropriations by Congress. Wayne *v.* United States, 26 Ct. Cl. 274; chapter 311, 27 Stat. 306. Thus the Secretary of the Treasury, the accounting officers, the Court of Claims and Congress accepted and gave effect to the view expressed by the Attorney General. In the Income Tax Act of 1894, c. 349, § 27 et seq., 28 Stat. 509, nothing was said about the compensation of the judges; but Mr. Justice Field regarded it as included and gave that as one reason for joining in the decision holding the act unconstitutional. 157 U. S. 604-606, 15 Sup. Ct. 673, 39 L. Ed. 759. On the rehearing the Attorney General (Mr. Olney) frankly said in his brief: 'There has never been a doubt since the opinion of Attorney General Hoar that the salaries of the President and judges were exempt.' The income tax acts of 1913, 1916, and 1917 (chapter 16, 38 Stat. 168; chapter 463, 39 Stat. 758, § 4 [Comp. St. § 6336d] chapter 63, 40 Stat. 329 [Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 63336d]) severally excepted the compensation of the judges then in office—also that of the President for the then current term. In short during a period of more than 120 years there was but a single real attempt to tax the judges in respect of their compensation, and that attempt soon was disapproved and pronounced untenable by the concurring action of judicial, executive and legislative officers. And so it is apparent that in the actual practice of the government the prohibition has been construed as embracing and preventing diminution by taxation. Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted?

* * *

"Thus the genesis and words of the amendment unite in showing that it does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another. And we have so held in other cases.

"'In Brushaber *v.* Union Pacific R. R. Co., 240 U. S. 1, 17, 18, 36 Sup. Ct. 236, 241 (60 L. Ed. 493, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414), where the purpose and effect of the amendment were first drawn in question, the Chief Justice reviewed at length the legistive and judicial action which promoted its adoption and then, referring to its text and speaking for a unanimous court, said:

"'It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense—an authority already possessed and never questioned—or to limit and distinguish

between one kind of income taxes and another, but that the whole purpose of the amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Indeed in the light of the history which we have given and of the decision in the Pollock Case and the ground upon which the ruling in that case was based, there is no escape from the conclusion that the amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock Case was decided, that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived, since in express terms the amendment provides that income taxes, from whatever source the income was derived, shall not be subject to the regulation of apportionment.'

"What was there said was reaffirmed and applied in Stanton *v.* Baltic Mining Co., 240 U. S. 103, 112, 113, 36 Sup. Ct. 278, 60 L. Ed. 546, and Peck & Co. *v.* Lowe, 247 U. S. 165, 172, 38 Sup. Ct. 432, 62 L. Ed. 1049, and in Eisner *v.* Macomber, 254 U. S. —, 40 Sup. Ct. 189, 64 L. Ed. —, decided at the present term, we again held, citing the prior cases, that the amendment 'did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income.'

"After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support the tax in question."

War Prohibition Act—State Law Not Suspended.—In Ex parte Guerra, 110 Atl. 224, the Supreme Court of Vermont held that the statute of that state prohibiting the unlicensed traffic in intoxicating liquors, did not cease to be of force or become suspended because of the subsequent enactment of the War Prohibition Act, approved November 21, 1918 (U. S. Comp. St. Ann. Supp. 1919, secs. 3115 11/12f-3115 11/12h).

The court said in part: "In some of the war-time legislation Congress has expressly reserved to the States the exercise of police powers, and it is argued therefrom that the absence of such reservations in the War Prohibition Acts indicates the intention of the Federal government to occupy the whole field, and thus suspend the operation of State legislation on the subject. But there was no need for Congress to authorize the continued exercise by the States of a power that had not been surrendered, and of which, as we have seen, they could by no means be deprived (South Carolina *v.* United States, 199 U. S., 437, 26 Sup. Ct., 110, 50 L. Ed., 261, 4 Ann. Cas., 737; Keller